

**WILLIAM FEENEY**

**June 1, 2005**

Page

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CIVIL ACTION NO.: 04-11492 REK

\* \* \* \* \*

MARIO LACY,

Plaintiff,

vs.

WILLIAM J. FEENEY, KENNETH

HEARNS, JUAN J. SEOANE,

and the CITY OF BOSTON,

Defendants,

\* \* \* \* \*

DEPOSITION OF: WILLIAM J. FEENEY

HRONES & GARRITY

Lewis Wharf Bay, Suite 232

Boston, Massachusetts 02110-3927

June 01, 2005

10:07 a.m. - 10:54 a.m.

KATHRYN K. GIANNO

COURT REPORTER

**CATUOGNO COURT REPORTING SERVICES**

**Springfield, MA Worcester, MA Boston, MA Lawrence, MA Pro**

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<p>1 Q What did they observe?</p> <p>2 A They observed a number of different</p> <p>3 things. One of my officers had a confidential</p> <p>4 informant make a purchase of heroin from Mr. Lacy</p> <p>5 and they stopped Mr. Lacy while he was in the deal</p> <p>6 with the female.</p> <p>7 Q Who stopped him?</p> <p>8 A Members of my squad.</p> <p>9 Q They actually stopped him when he was</p> <p>10 negotiating the deal?</p> <p>11 A He had already had conversations with the</p> <p>12 female. He went up to what my officers believed to</p> <p>13 be a location where he was storing drugs. When he</p> <p>14 was on his way back towards that female, they</p> <p>15 stopped him.</p> <p>16 Q Where did they stop him?</p> <p>17 A On Marvin Street.</p> <p>18 Q More specifically where?</p> <p>19 A About mid on Marvin Street.</p> <p>20 Q Did they have grounds to arrest him at</p> <p>21 that point?</p> <p>22 A They had probable cause to arrest him,</p> <p>23 yes.</p> <p>24 Q But he wasn't arrested?</p>	<p>1 they stopped him he was going to have drugs on</p> <p>2 him which he was going to deliver to the</p> <p>3 female.</p> <p>4 Q (By Mr. Hrones) But apart from finding</p> <p>5 drugs on him, they could have arrested him?</p> <p>6 A They had that discretion whether or not to</p> <p>7 arrest him, yes.</p> <p>8 Q So, was there a search of Mr. Lacy?</p> <p>9 A Yes, there was.</p> <p>10 Q Did you observe it?</p> <p>11 A I didn't observe the actual search, no.</p> <p>12 Q Because you had your back to the person</p> <p>13 doing the search?</p> <p>14 A That's correct.</p> <p>15 Q Did you authorize the search?</p> <p>16 A Yes, I did.</p> <p>17 Q And what type of search did you authorize?</p> <p>18 A I didn't authorize any specific search. I</p> <p>19 told Officer Hearn, who was doing the search</p> <p>20 because he believed that he may have some contraband</p> <p>21 or a weapon on him, I told Officer Hearn if he</p> <p>22 thought he had something on him to search him.</p> <p>23 Q Was a strip search conducted?</p> <p>24 A Yes, it was.</p>
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<p>1 A No.</p> <p>2 Q Why not?</p> <p>3 A It was a decision at that point not to</p> <p>4 arrest him.</p> <p>5 Q But you had seen him actually buying from</p> <p>6 the confidential informant?</p> <p>7 A No, he was selling.</p> <p>8 Q You actually observed that?</p> <p>9 A It was observed, yes.</p> <p>10 Q You actually saw him approach a female?</p> <p>11 A A female approached him. I didn't see it,</p> <p>12 my officer saw it.</p> <p>13 Q What did they observe, you know, what did</p> <p>14 they say?</p> <p>15 MR. CHERNETSKY: Objection.</p> <p>16 THE WITNESS: They told me they had</p> <p>17 observed a female in conversation with him,</p> <p>18 that he walked up towards the dumpster area off</p> <p>19 of Marvin Street, and when he was on his way</p> <p>20 back, they stopped him.</p> <p>21 Q (By Mr. Hrones) On what basis were they</p> <p>22 stopping him if they weren't going to arrest him?</p> <p>23 MR. CHERNETSKY: Objection.</p> <p>24 THE WITNESS: They believed at the time</p>	<p>1 Q But you didn't see it?</p> <p>2 A No, I didn't.</p> <p>3 Q Were you informed -- how do you know it</p> <p>4 was a strip search?</p> <p>5 A By our rules and regulations and</p> <p>6 guidelines relative to strip search, a strip search</p> <p>7 was performed.</p> <p>8 Q What are your regulations relative to the</p> <p>9 strip search?</p> <p>10 A The definition of a strip search from the</p> <p>11 Boston Police Department is the rearranging of</p> <p>12 anybody's clothing in order to view their genitals</p> <p>13 or their breasts.</p> <p>14 Q It's broader than that, isn't it buttocks</p> <p>15 also?</p> <p>16 A That's correct.</p> <p>17 Q And you were told that this was done --</p> <p>18 well, what were you told was done?</p> <p>19 A I wasn't told specifically what was done.</p> <p>20 I told Officer Hearn if he thought he had something</p> <p>21 on him to search him.</p> <p>22 Q How do you know it was a strip search?</p> <p>23 A I assumed what was going to be done, he</p> <p>24 was going to look down into the pants area of Mr.</p>

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<p>1 saying you can't do it. We are not talking about a 2 constitutional right, we are talking about a Boston 3 Police regulation, and you'll concede that it says 4 that you cannot do a strip search outside the 5 district station? 6 A But there's more to it than that. You're 7 taking part of that sentence and -- 8 Q It says, and we are referring to Section 9 Four -- 10 MR. CHERNETSKY: For the record, could you 11 give us the rule number? 12 MR. HRONES: Yes, it's Rule 318D. 13 Q (By Mr. Hrones) Now, you're familiar with 14 this? 15 A I am pretty familiar with that. 16 Q It says, "Police officers are prohibited 17 from conducting a strip search outside the confines 18 of the district station unless such strip search is 19 authorized by a warrant." 20 A Correct. 21 Q That's not ambiguous, is it? 22 A As far as I'm concerned it is, yes. 23 Q But you didn't have a warrant? 24 A The courts don't issue a warrant.</p>	<p>1 Q You had grounds to arrest him, so you 2 could have taken him to the district station, right? 3 A Yes, we could have. 4 Q And you could have strip searched him 5 there? 6 A Yes. 7 Q Why wasn't that done rather than doing the 8 strip search out in the open? 9 MR. CHERNETSKY: Objection. 10 THE WITNESS: Because he wasn't being 11 placed under arrest. 12 Q (By Mr. Hrones) But you had grounds to 13 place him under arrest? 14 A Yes, we did. 15 Q You conceded at the other deposition that 16 the strip search violated the regulations, did you 17 not? 18 A I don't recall. 19 Q Now, was a police report made out in this 20 case? 21 A No. 22 Q If there is a strip search, you're 23 supposed to put it in the police report, aren't you? 24 A If the strip search was done and the</p>
Page 15	Page 17
<p>1 Q But that doesn't matter, does it, whether 2 they issue them or not when the regulation says that 3 you need a warrant? 4 A The regulation states that. 5 Q Right. 6 A Again, there's not a court in the state of 7 Massachusetts that issues a warrant to strip search 8 somebody outside of the district station. 9 Q That may be true, but the regulation says 10 you need a warrant to do the search? 11 A I understand that. 12 Q And you had the man, the basis to arrest 13 him, didn't you? 14 A Yes. 15 Q So you could have gotten a warrant to 16 search him? 17 A Again, we are getting back to warrants to 18 search people; courts don't issue warrants to search 19 people. 20 Q Well, you don't ask for them, do you? You 21 can get a warrant to search someone? 22 A A body cavity search, yes. But not a 23 warrant to search somebody other than a body cavity 24 search warrant.</p>	<p>1 person was arrested, a 1.1 would have been written 2 out, yes. 3 Q Was a complaint sustained against you for 4 not putting a strip search in a police report in 5 another case? 6 A Yes, it was. 7 Q What case was that? 8 A The Santiago matter. 9 Q What's the status of that matter now? Is 10 it on appeal? 11 A Yes. 12 Q What was the penalty on that? 13 A A two day suspension. 14 Q So it's your position that you don't have 15 to make out a report indicating there was a strip 16 search if you don't arrest the person? 17 A At this time, the time of this incident, 18 that was my interpretation. 19 Q What's the law now? What's the position 20 now? 21 A If we were to do something like that, we 22 would write out an investigative person's report and 23 indicate so in the 1.1. 24 Q You would do a 1.1?</p>

5 (Pages 14 to 17)

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1 Q And you do searches?  
 2 A Yes.  
 3 Q And you do strip searches from time to  
 4 time, or you did at that time?  
 5 A If need be, yes.  
 6 Q Were you aware of a situation where the  
 7 officer doing the strip search requested gloves?  
 8 A He did.  
 9 Q Did he request them from you?  
 10 A No, he asked one of the other officers.  
 11 Q But you heard him?  
 12 A I believe I did, yes.  
 13 Q And do you know why he wanted gloves?  
 14 MR. CHERNETSKY: Objection.  
 15 THE WITNESS: He knew Mr. Lacy pretty well  
 16 and he believed him to be HIV positive. So for  
 17 his own protection he wanted to be sure he had  
 18 protection on his hands if he was going to  
 19 search him.  
 20 Q (By Mr. Hrones) It's your understanding he  
 21 never touched the skin of Mr. Lacy, did he?  
 22 A I don't know.  
 23 Q You heard he pulled the underwear out, the  
 24 elastic of the underwear, in order to look at his

Page 23

1 rear end?  
 2 A That's correct.  
 3 Q So you had no information that he touched  
 4 the body of Mr. Lacy, did you?  
 5 A No, I didn't.  
 6 Q And you're aware that you can't get HIV  
 7 from just touching the clothing of a person?  
 8 A That's correct.  
 9 Q So were the gloves given to him?  
 10 A We didn't have any gloves.  
 11 Q Because you don't use gloves normally in  
 12 the street?  
 13 A We normally don't, no.  
 14 Q What did you use in place?  
 15 A Officer Broderick (phonetic) went to the  
 16 trunk of his car and retrieved a couple of clear  
 17 plastic evidence bags that we use for bagging up  
 18 drug evidence and gave them to Officer Hearn.  
 19 Q So he was using an evidence bag to do  
 20 what?  
 21 A To protect his hands while he was  
 22 searching Mr. Lacy.  
 23 Q So a lot of the people, the drug addicts  
 24 that you deal with in the street, they have HIV,

Page 24

1 don't they?  
 2 A A percentage of them do, yes.  
 3 Q But still you don't carry gloves in the  
 4 car when you're out in the street?  
 5 A No.  
 6 Q So a lot of these people are searched  
 7 without gloves?  
 8 A A good portion of them are, yes.  
 9 Q But if there was to be an anal cavity  
 10 search, you would want gloves, wouldn't you?  
 11 A We wouldn't do an anal cavity search.  
 12 Q But if you did one?  
 13 MR. CHERNETSKY: Objection.  
 14 THE WITNESS: We wouldn't do one.  
 15 Q (By Mr. Hrones) You can get a warrant for  
 16 one, can't you?  
 17 A Then it's done by a doctor in a medical  
 18 facility, yes.  
 19 Q Have you ever seen it done?  
 20 A I've applied for warrants before for body  
 21 cavity search warrants and had them done at the  
 22 hospital.  
 23 Q And you've observed them?  
 24 A No.

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1 Q Now, are you aware that some feces matter  
 2 was found on one of the evidence bags?  
 3 A Yes, I was made aware of that.  
 4 Q Do you know how that got on there?  
 5 MR. CHERNETSKY: Objection.  
 6 THE WITNESS: I have no idea.  
 7 Q (By Mr. Hrones) You have no idea?  
 8 A No.  
 9 Q Now, why was he being strip searched?  
 10 A For two reasons, one was we had reason to  
 11 believe he may have heroin on him because he was  
 12 going back to, what we believe, was to deliver to  
 13 the female we had observed him engaged in  
 14 conversation with. When the officers went to frisk  
 15 him and pat him down, when Officer Hearn got  
 16 towards the front of his pants, he kept pulling  
 17 away.  
 18 And probably about a week earlier  
 19 than that, Officer Hearn had a similar incident in  
 20 the Dudley Triangle area. And when that individual  
 21 was brought into the station, he was found to have a  
 22 32 semi-automatic in the front of his pants.  
 23 At the time he was brought in, he was  
 24 dressed very similar to what Mr. Lacy was, a pair of

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1 A Because there was Officer Hearn's  
 2 performing the strip search, there was no need for  
 3 anybody else to watch what was going on. I was  
 4 facing out towards the street to provide as much  
 5 privacy as I could for Mr. Lacy while the strip  
 6 search was being conducted in case a car should  
 7 happen to drive up the street or if somebody should  
 8 happen to walk down the street.  
 9 Q But the strip search didn't involve taking  
 10 his clothes off, did it?  
 11 A No.  
 12 Q It only involved Officer Hearn's looking  
 13 down his underwear to his rear end?  
 14 A That's correct.  
 15 Q So no one other than Hearn's could have  
 16 seen his rear end?  
 17 A That's correct.  
 18 Q So why was there a need to do a shield if  
 19 it was that type of strip search?  
 20 A Because you still have Mr. Lacy's face,  
 21 people walking by might see him and wonder what's  
 22 going on. We try to provide as much privacy as we  
 23 could under the conditions we're working with.  
 24 Q What time at night was it?

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1 A About 5:45, 6:00 p.m., somewhere around  
 2 there.  
 3 Q Now the evidence bag, what size is that?  
 4 A There was no specific size, it's  
 5 approximately six- or seven-inches long by about  
 6 four and a half, five-inches wide.  
 7 Q Did it fit over his hand?  
 8 A Over whose hand?  
 9 Q Officer Hearn's hand?  
 10 A I believe it did, yes.  
 11 Q Do you remember telling Internal Affairs  
 12 that it did not even fit over his hand?  
 13 A I don't recall making that statement.  
 14 Q Have you seen this document that is a  
 15 summary of the interview?  
 16 A This is an interview with J. Broderick,  
 17 this isn't my interview.  
 18 Q I'm sorry, that's the end of it. Yes,  
 19 here it is. Oh, yeah, okay, you're correct. Your  
 20 interview begins at the bottom of that page, sorry  
 21 about that.  
 22 Did you review anything before coming  
 23 in here?  
 24 A No, I didn't.

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1 Q Have you ever reviewed Officer Hearn's  
 2 deposition?  
 3 A No, I haven't.  
 4 Q Have you reviewed your deposition from the  
 5 Santiago case?  
 6 A From the Santiago case?  
 7 Q Yes.  
 8 A I believe I did once, yes.  
 9 MR. HRONES: If we can just have a little  
 10 break?  
 11 MR. CHERNETSKY: Sure.  
 12  
 13 (Off the record.)  
 14  
 15 Q (By Mr. Hrones) Officer, have the  
 16 regulations been changed since this incident?  
 17 A No, not that I am aware of, no.  
 18 Q No new regulation?  
 19 A Not as far as I know.  
 20 Q Any new procedures without regulations?  
 21 A Nothing written in policy, not that I can  
 22 remember.  
 23 Q Except for the fact that you don't do  
 24 strip searches outside the station or without a

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1 warrant, do you?  
 2 A We don't do them out on the street, if you  
 3 will.  
 4 Q And who told you you shouldn't do that  
 5 anymore?  
 6 A I forget who it was.  
 7 Q Now, did you see any violation of police  
 8 regulations that night?  
 9 A Not that I was aware of, no.  
 10 Q You knew there was a strip search?  
 11 A Yes.  
 12 Q That's a violation of the regulations?  
 13 A Interpretation, yeah. But, at that point  
 14 there, at that time at night -- or at that instance  
 15 I should say, not that time of night, but that  
 16 instance, I didn't feel it was a violation of the  
 17 rules and regulations.  
 18 Q When did you realize it was a violation?  
 19 A When it was brought to my attention some  
 20 days later.  
 21 Q Who brought that to your attention?  
 22 A Again, I don't recall. There were a  
 23 number of individuals I had spoken to after the  
 24 incident.

9 (Pages 30 to 33)

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1 Date: July 8, 2005  
 2 To: James M. Chernetsky, Esq.  
 3 Copied to: Stephen Hrones, Esq.  
 4 From: Kathryn K. Gianno  
 5 Deposition of: William J. Feeney  
 6 Taken: June 01, 2005  
 7 Action: MARIO LACY vs. WILLIAM J. FEENEY, ET  
 8 AL

9  
 10 Enclosed is a copy of the deposition  
 11 of WILLIAM J. FEENEY, taken on JUNE 01, 2005,  
 12 in the above-entitled action.

13 The deponent has thirty days to sign the  
 14 deposition from the date of its submission to the  
 15 deponent, which is the above date.

16 Have the deponent sign the enclosed signature  
 17 page. Any errors should be marked by page, line and  
 18 error on the enclosed correction sheet, and forwarded  
 19 to all interested parties. Please do not mark the  
 20 transcript itself.

21 Thank you for your cooperation.  
 22  
 23  
 24

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1 UNITED STATES DISTRICT COURT  
 2 DISTRICT OF MASSACHUSETTS  
 3 CIVIL ACTION NO.: 04-11492 REK  
 4

5 \*\*\*\*\*

6 MARIO LACY, \*  
 7 Plaintiff, \*  
 8 vs. \*

9 WILLIAM J. FEENEY, KENNETH \*  
 10 HEARNS, JUAN J. SEOANE, \*  
 11 and the CITY OF BOSTON, \*  
 12 Defendants, \*

13 \*\*\*\*\*

14  
 15  
 16 I, WILLIAM J. FEENEY, do hereby certify,  
 17 under the pains and penalties of perjury, that the  
 18 foregoing testimony is true and accurate, to the  
 19 best of my knowledge and belief.

20 WITNESS MY HAND, this day of  
 21 , 2005.

22 \_\_\_\_\_  
 23 WILLIAM J. FEENEY  
 24

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1 CORRECTION SHEET

2 DEPONENT: WILLIAM FEENEY

3 CASE: LACY VS. FEENEY, ET AL

4 DATE TAKEN: 06/1/05

5 \*\*\*\*\*

6 PAGE / LINE / CHANGE OR CORRECTION AND REASON

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